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ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4
New York, 13-31 August 1990

ADMINISTRATIVE ARRANGEMENTS, STRUCTURE AND FINANCIAL IMPLICATIONS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

(Addendum)

(A scheme to phase in the establishment of the International Tribunal for the Law of the Sea)

(Prepared by the Secretariat)

INTRODUCTION

1. Special Commission 4 requested the Secretariat to prepare a working paper outlining a scheme for phasing in the establishment of the Tribunal to serve during the initial stages of its existence. The paper was required to reflect the most efficient initial institutional structure taking special account of the necessity for economy and for minimizing the financial burden on States Parties. The working paper was required to be based on the deliberations in the Special Commission on the administrative arrangements, structure and financial implications of the Tribunal, as reflected in document LOS/PCN/SCN.4/WP.8, which envisages an active and functional Tribunal with two official working languages. The present paper proceeds on the same basis regarding the number of official working languages.

I. CRITERIA

2. The Convention, including the Statute of the Tribunal, and the Draft Rules 1/ provide the primary framework within which the Tribunal would function. The appropriate international practice, where relevant, in particular that of the International Court of Justice, have been resorted to for guidance in determining the manner in which the Tribunal would operate and in identifying a functional framework for the Tribunal. Particular note has been made of the fact that the Tribunal is responsible for its internal functioning and has a wide degree of

discretion in establishing the modalities for doing so. For the purpose of estimating relevant financial implications, the experience of similar institutions has been resorted to for guidance, while the United Nations practice has been used as the basis for staff remuneration and allowances.

3. The Convention establishes a Tribunal with 21 independent members who should have the requisite qualifications and competences. 2/ The Convention also requires the representation of the principal legal systems of the world and equitable geographic distribution in the constitution of the Tribunal as a whole. 3/ It further specifies that no less than three members should be from each geographic group established by the General Assembly of the United Nations. 4/

4. The Statute further requires that all available members of the Tribunal shall sit and that a quorum of 11 elected members shall be required to constitute the Tribunal. The determination as to which members are available to constitute the Tribunal for a particular dispute is to be made by the Tribunal itself, 5/ subject to the nationality requirements. 6/ If the parties request, the disputes or application would be heard and determined by a chamber; otherwise it would be submitted to the Tribunal. 7/ Disputes relating to the international sea-bed area and submitted in accordance with Part XI of the Convention would be submitted to the Sea-Bed Disputes Chamber.

5. The Sea-Bed Disputes Chamber comprises 11 members of the Tribunal selected by it from among the 21 members. It can establish ad hoc chambers of three members. 8/ The membership of the special chambers of the Tribunal, which include the Chamber of Summary Procedure with five members, 9/ and the standing special chambers with three or more members for dealing with particular categories of disputes, could overlap, since there is no restriction. Such would be the case also in constituting ad hoc chambers of the Tribunal, assuming that they were composed of no more than five members. 10/ Their composition is decided on by the Tribunal with the approval of the parties to the dispute.

6. The requirements set out in paragraphs 3 to 5 above are the primary requirements of the Convention. They provide the institutional framework for the judiciary of the Tribunal when exercising its contentious or advisory jurisdiction.

II. APPROACH

7. In responding to the request of Special Commission 4, the Secretariat has attempted to ensure that:

(a) The approach is consistent with the requirements of the Convention and the Statute of the Tribunal;

(b) The Tribunal and its chambers are able to respond, within a reasonable time frame and given the circumstances, to urgent cases, applications, or requests for advisory opinions submitted to it;

(c) The institution and its staffing provide a viable Registry with the capacity to serve the needs of the Tribunal.

8. Given the provisions of the Statute concerning the election of members, the working paper provides for the fulfilment of the requirement that all 21 Judges be elected at the initial election. This is in compliance with the letter of the Statute. 11/ It also fulfils the requirement of geographic distribution and representation of the principal legal systems as stipulated therein.

9. The Statute does not require that all members should function in each case. It also does not require the members to reside at the seat of the Tribunal, with the exception of the President. For the purpose of these proposals, it is assumed that the President and the Vice-President would always be available at the seat of the Tribunal and that a minimal number of other members would also be available at all times.

10. Two of the alternatives in these proposals provide for the availability of five or more members at the seat of the Tribunal on a regular basis. These alternatives would permit the constitution of the standing and ad hoc chambers of limited size. This is consistent with the more recent trends in the experience of international courts and tribunals, which is that disputant parties tend to resort to pre-constituted or ad hoc chambers, as compared with the frequency with which there are requests for the constitution of the full tribunal to hear or determine a case or application.

11. These alternatives ensure the availability of the Chamber of Summary Procedure which could be pre-constituted and may be resorted to at any time. 12/ They would also permit the constitution of special chambers comprising a minimum of three members for dealing with particular categories of disputes. 13/

12. These alternative proposals would also permit appropriate geographic distribution and representation of the principal legal systems even within the chambers. The proposals also make it possible to convene all members of the Tribunal or to convene 11 members who would constitute a quorum of the whole Tribunal, as and when required, without any restriction and without undue delay.

13. The proposals do not in any way restrict the possibility for the full Tribunal to be constituted and to meet immediately following its initial establishment for such period as may be required to adopt its rules of procedure and other internal rules for its functioning or for its administration.

14. As and when the work-load of the Tribunal increases, or when there is an intensity of work at any point, the Tribunal can function either in its fully constituted form or in its initial form.

III. SCHEME FOR INITIAL ESTABLISHMENT OF THE TRIBUNAL AND REQUISITE REGISTRY

A. Elections

15. The initial election requires a division of 21 vacancies into three groups of seven, the first of which will serve for three years, the second for six years and the third for nine years. All subsequent elections would be for a nine-year term

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with seven vacancies coming up every three years. There need be no variance of this scheme for the initial phase. The system of nomination and election would also remain unchanged.

B. Availability of members

16. The Statute does not require that the elected members should refrain from employment or activity, other than certain specified activities. The members are required to refrain from any political or administrative function. They should not have any active association or financial interest in the operations of any enterprise involved in ocean resource exploration or exploitation or commercial uses of the sea or sea-bed. The only other restriction is that they may not act as agent, counsel or advocate in any case. They could thus maintain a professional occupation or some form of employment that is not subject to this restriction, unless they are required to be present at the seat of the Tribunal.

17. During the inital phase, even though all 21 members are elected in order to comply with the requirements of the Convention, the Tribunal would have the discretion to utilize a limited number of members on a continuing basis, while the others held themselves available. The Tribunal could fix a term and identify a limited number of members who, in the first instance, are to be present and available at the Seat for the duration. The others would be aware that it was unlikely that they would be called upon to serve. Thus, they would be relatively free to be otherwise occupied. During the next term of such an arrangement, a similar number of members would be identified on the basis of rotation. Such a system of rotation would need to be carried out on an equitable basis. Thus, during the initial phase, a limited number of members would be required to be present at all times at the Seat, while the others remained in their usual places of residence.

18. The President is required to reside at the Seat of the Tribunal 14/ and it can be reasonably assumed that the Vice-President would also be required to be present at the Seat at all times. The first alternative is for only these two members to be resident and available at the seat of the Tribunal. However, this would not enable the Tribunal to function without securing the presence at the Seat of an additional number of members as required to constitute a chamber, or to fulfil the quorum requirement.

19. Assuming that all geographic groups should be represented at the seat of the Tribunal, the minimum number required would be five members present at all times. If it is intended to have a quorum of members constituting the Tribunal present, then the number of members involved would be a minimum of 11. This would also permit appropriate geographical distribution. If any of these cases, i.e., whether 2, 5 or 11 members are required to be present at the Seat at all times, then the other members would hold themselves available, in the event that a greater number of members is required or when a full Tribunal has to be constituted.

20. The first alternative in the attached cost implications is founded on the assumption that those members present at all times at the seat of the Tribunal would be the President, as required by the Convention, 14/ and the Vice-President as well.

21. The second alternative in the cost implications is based on the assumption that the President and the Vice-President and a minimum of three other members would at all times be available at the Seat. This alternative would permit the constitution of the standing chambers or special chambers as well as a Chamber of Summary Procedure, each of which requires no more than five members. 15/ Even the ad hoc chambers could be constituted, if they are of limited size.

22. The third alternative would be for 11 members to be available at all times, including the President and Vice-President. This would permit not only the constitution of the special chambers and the Chamber of Summary Procedure, but also the constitution of the whole Tribunal with the quorum requirement fulfilled and the constitution of the Sea-Bed Disputes Chamber as well.

C. Remuneration of members

23. The Statute provides for the members to be remunerated on the basis of annual allowances and special allowances. In any case where a member is present at the seat of the Tribunal at all times, the remuneration would be the full amount of the annual allowance and the full amount of the special allowance. 16/ The special allowance is payable for every day on which a member exercises his functions. 17/ In addition, the President receives a special allowance, 18/ and the Vice-President would receive the same for each day on which he acts as President. 19/

24. In order to minimize the cost implications during the initial phase, or at those times when the Tribunal is not relatively active, it is proposed in the attached estimates that the amount of annual allowance should be kept at the basic level. Thus, those members who only hold themselves available at their usual places of residence and who are not present at the seat of the Tribunal would only receive an annual allowance, which for the purpose of the estimates in the present working paper has been established at $25,000. They would not receive a special allowance or any other remuneration in the usual course, unless they are called upon to serve. Their total remuneration would only be the amount of the annual allowance.

25. For those members who are called upon to serve, the special allowance for a year cannot exceed the annual allowance, 20/ and on the basis of the estimates in the present working paper the maximum special allowance would be $25,000.

26. Given the need to maintain a presence at the Seat of the Tribunal, under the estimates it is proposed that a supplementary subsistence allowance applicable to the Seat should be paid. While the payment of the annual and special allowances is specified in the Statute, there is no provision in the Convention which would prevent the payment of a subsistence allowance. Where a member's presence is required at the Seat for a prolonged period, the maximum amount of subsistence allowance would be for 250 days 21/ in any calendar year. Utilizing the current level of subsistence payment under United Nations practice for Hamburg, the maximum amount of subsistence payment for any calendar year would therefore be computed at $62,500. 22/ Thus, the maximum remuneration that a member would receive, including the maximum subsistence allowance, would be $112,500 per year. 23/ When the Tribunal is fully functional and active, the subsistence component would be incorporated into the basic annual and special allowances.

D. Structure and staff of the Registry

27. The structure and staffing of the Registry would, to a certain degree, depend on the level of activity of the Tribunal:

(a) Assuming that there are only two resident members and a minimal work-load, the structure of the Registry and corresponding staffing and cost implications are reflected in scheme A of annex I to the present paper, and the corresponding columns in annexes II and III;

(b) Assuming that five members are continuously present, with the same case-load, the corresponding staffing structure is to be found in scheme B of annex I and the corresponding staffing and cost implications in annexes II and III;

(c) Assuming that 11 members are present at all times with the same work-load, the corresponding staffing structure and cost implications are reflected in annexes II and III.

28. As compared with LOS/PCN/SCN.4/WP.8 and Add.1, the structure of the Registry and staffing requirements for a minimal initial establishment also reflect an approach whereby Professional and General Service staffing is based on the recruitment of multivalent staff who have combined capabilities. For instance, the secretaries might have legal, political or technical expertise combined with linguistic capabilities; such could also be the case with the judicial support services. As regards the General Service staff, again it is assumed that some would have combined capabilities. This approach is consistent with the staffing of other international courts and tribunals, particularly the Registry of the International Court of Justice, which with a limited number of staff provides the range of services required. This approach has permitted further streamlining of staff requirements, as reflected in the attached estimates.

IV. GENERAL

29. Where there is a fluctuation in the number of members present at the Seat for any period of time, or regarding the work-load, the cost implications would not be directly proportional. The estimated costs are on an annual basis and are indicative for planning purposes. They are only applicable in accordance with the assumptions referred to. They would not hold if applied to shorter periods. Any increase in needs, even for short periods, would require increases at least in temporary assistance and contractual services.

Notes

1/ LOS/PCN/SCN.4/WP.2/Rev.1/Parts I and II.

2/ Annex VI, art. 2, para. 1.

3/ Ibid., para. 2.

4/ Ibid., art. 3, para. 2.

5/ Ibid., art. 13, para. 2.

6/ Ibid., art. 17.

7/ Ibid., art. 15, paras. 3 and 4.

8/ Ibid., art. 35 and art. 36, para. 1.

9/ Ibid., art. 15, para. 3.

10/ Ibid., art. 15, para. 2.

11/ Ibid., art. 2.

12/ Ibid., art. 15, para. 3.

13/ Ibid., art. 15, para. 1.

14/ Ibid., art. 12, para. 3.

15/ Ibid., art. 15.

16/ Ibid., art. 18, para. 1.

17/ For computational purposes, the number of working days in a calendar year is established at 250 days. This takes account of weekends and vacation time.

18/ Ibid., art. 18, para. 2.

19/ Ibid., art. 18, para. 3.

20/ Ibid., art. 18, para. 1.

21/ See note 17, supra.

22/ This computation is based on the current United Nations subsistence rate for Hamburg (approximately $250 per day) paid for a period of 250 days.

23/ This would bring the total remuneration of a member who is present and functions throughout the year to a level comparable to the salaries of judges of other international courts and tribunals.

Annex I

(Scheme A)

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME A)

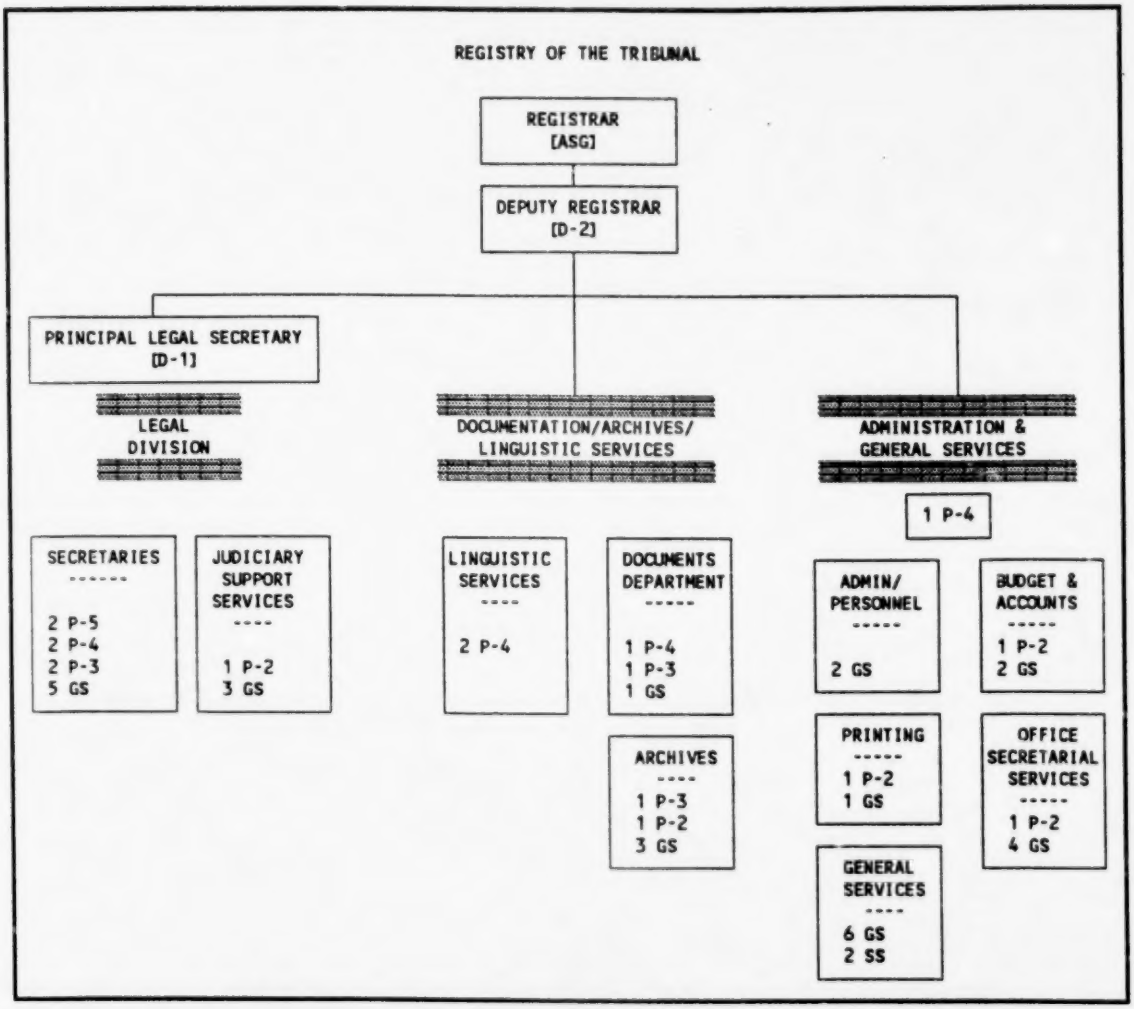

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	1	2	6	4	5	4	25	49

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Annex I

(Scheme B)

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME B)

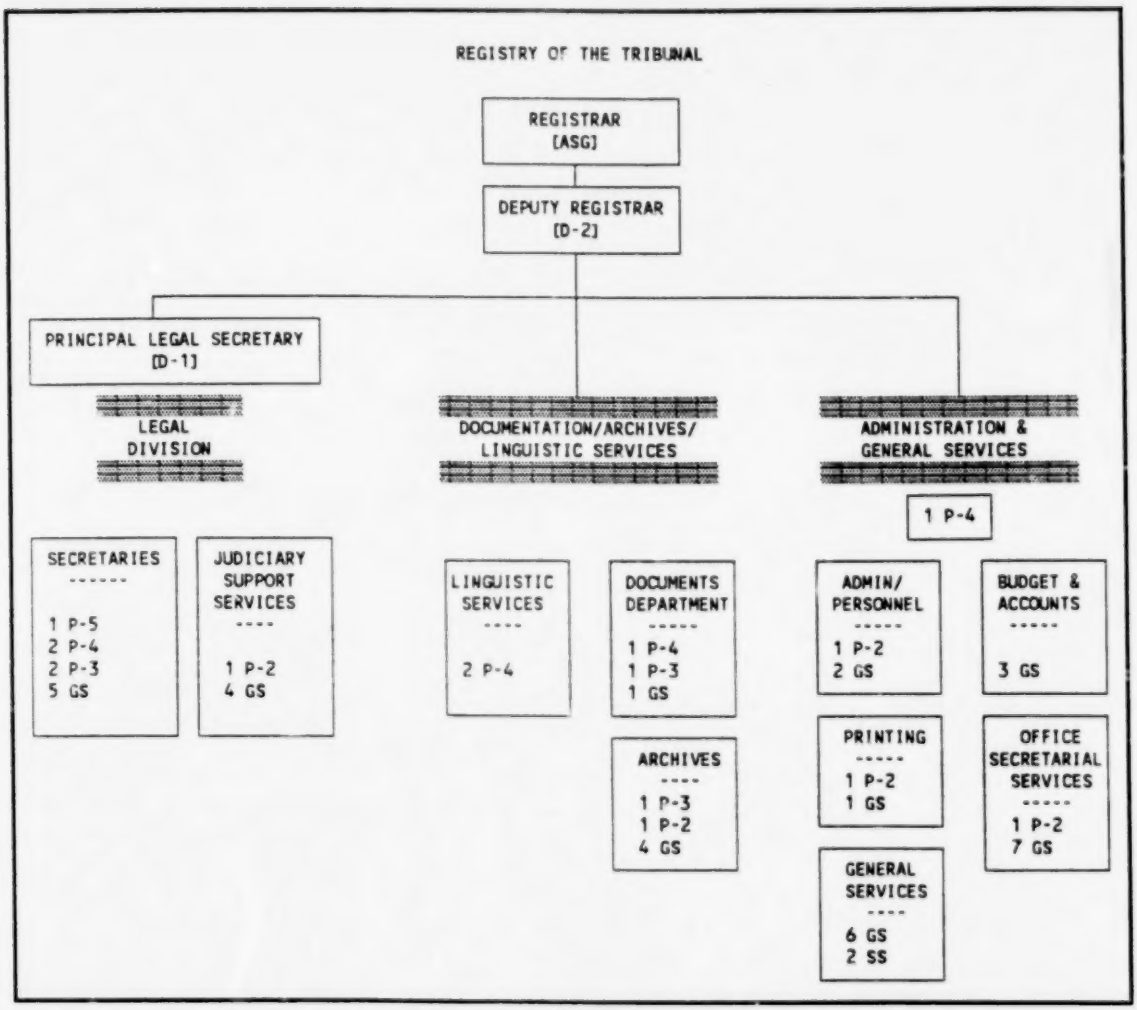

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	1	3	6	4	5	5	30	56

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Annex I

(Scheme C)

ORGANIZATIONAL CHART OF THE REGISTRY OF THE TRIBUNAL

(SCHEME C)

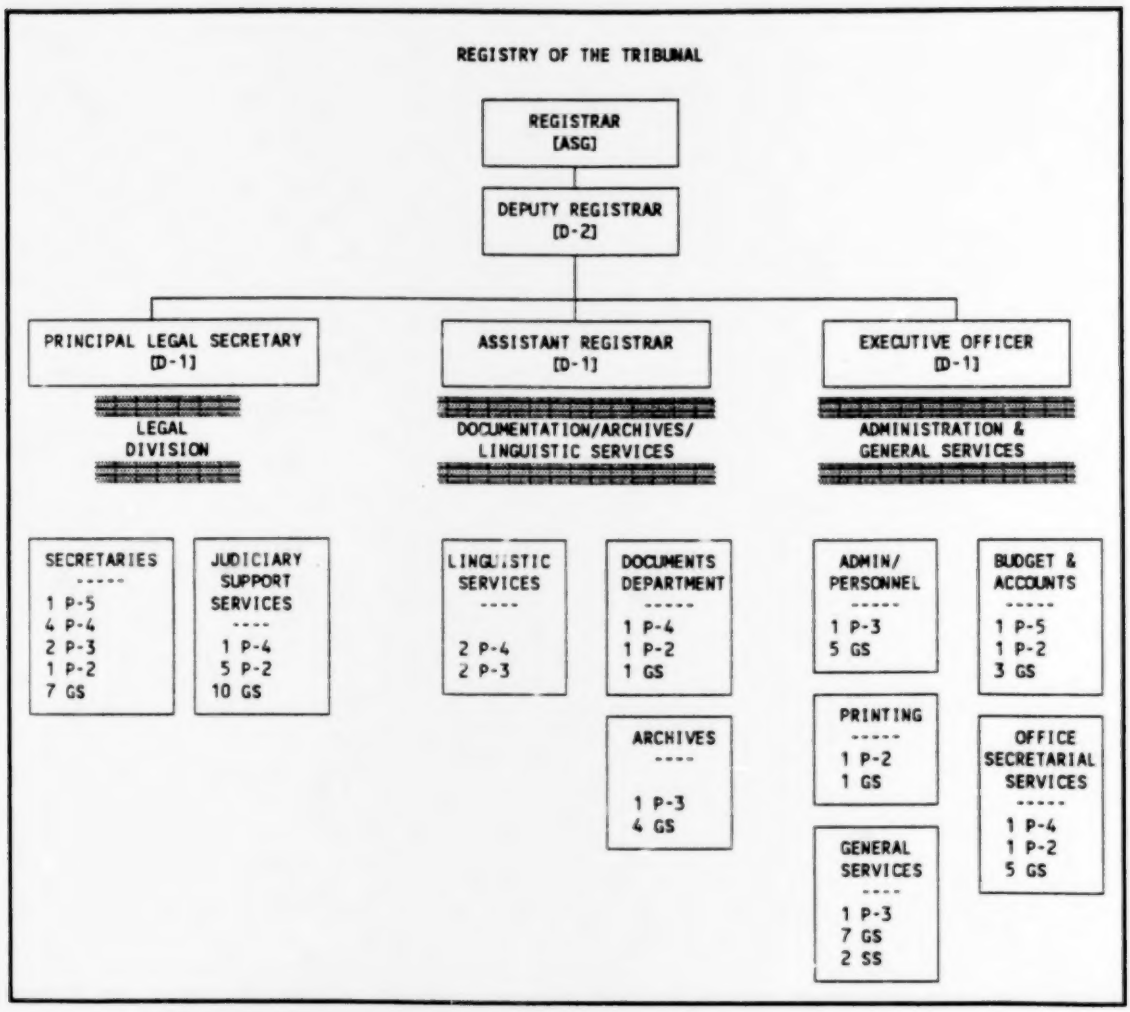

Table 1. Post Requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. Level	GS Other Level	TOTAL
1	1	3	2	9	7	10	8	37	78

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Annex II

STAFFING STRUCTURE OF THE REGISTRY OF THE TRIBUNAL

Number of posts Schemes					Number of posts Schemes		
A	B	C	Level	Functions	A	B	C
1	1	1	ASG	Registrar	1	1	1
1	1	1	D-2	Deputy Registrar	1	1	1
1	1	3	D-1	Assistant Registrar	0	0	1
				Principal Legal Secretary (Secretary, Rules Committee)	1	1	1
				Executive Officer	0	0	1
2	3	2	P-5	Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee)	0	1	1
				Senior Secretary (Secretary, Public Relations)	1	1	1
				Senior Secretary	1	1	0
6	6	9	P-4	Accountant/Establishment Officer	1	1	0
				Head, Documents Dept./Librarian (Secretary, Library and Archives Committee)	1	1	1
				First Secretary (Secretary, Staff Appeals Board)	1	1	1
				First Secretaries	0	0	3
				Special Assistant	0	0	1
				Revisers/Translators	2	2	2
				Information Officer	1	1	0
				Head of Office Secretarial Services	0	0	1
4	4	7	P-3	Secretaries	1	1	2
				Special Assistant	1	1	0
				Revisers/Translators	0	0	2
				Head of Archives	1	1	1
				Head of Administration/Personnel	0	0	1
				Co-ordinator, General Services	0	0	1
				Librarian	1	1	0
5	5	10	P-2/P-1	Associate Secretary	0	0	1
				Judiciary Secretaries/Researchers	1	1	5
				Associate Librarian	0	0	1
				Associate Administrative/Budget Officer	1	1	1
				Head of Office Secretarial Services	1	1	1
				Head of Printing	1	1	1
				Associate Archives Officer	1	1	0
29	35	45	GS	Principal level	4	5	8
				Other levels	23	28	35
				Security Officers	2	2	2
49	56	78		TOTAL	49	56	78

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Annex III

SUMMARY OF RECURRENT FINANCIAL IMPLICATIONS

Objects of expenditure	Annual costs (Thousands of United States dollars) Scheme A a/	Scheme B b/	Scheme C c/
Established posts	2 108.2	2 365.9	3 362.7
Temporary assistance for meetings	260.0	190.0	260.0
General temporary assistance	85.5	81.3	78.0
Overtime	40.0	35.0	24.0
Temporary posts	413.8	413.8	566.2
Common staff costs	767.7	1 168.1	1 625.5
Representation allowances	3.6	3.6	3.6
Official travel of staff	60.5	49.5	42.0
External printing and binding	210.0	210.0	210.0
Annual and special allowances of members	955.0	1 133.5	1 574.5
Rental and maintenance of premises d/	(200.0)	(200.0)	(200.0)
Rental and maintenance of equipment	30.2	35.1	48.0
Communications	56.5	65.8	90.0
Hospitality	3.5	3.7	5.0
Miscellaneous services	2.5	2.9	4.0
Supplies and materials	78.5	91.4	125.0
Furniture and equipment	31.4	36.5	50.0
TOTAL	5 106.9	5 956.1	8 068.5

Note: Data on costs of established posts, common staff costs, and representation allowance applicable for 1991 are based on the United Nations "Standard Costs Version 22/90" of May 1989, the latest published version available at the present time. In the absence of data applicable to United Nations staff at Hamburg, the data on The Hague duty station is used in the table.

a/ Two members present at Seat, 19 members hold themselves available.

b/ Five members present at Seat, 16 members hold themselves available.

c/ Eleven members present at Seat, 10 members hold themselves available.

d/ Not included in total. In the event that no rental is involved, maintenance costs may be required.